

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Cause No. 1:19CR00087 SNLJ

ROBBIE DONYEL HUDSON,

Defendant.

SENTENCING HEARING

BEFORE THE HONORABLE STEPHEN N. LIMBAUGH, JR.
UNITED STATES DISTRICT JUDGE

FEBRUARY 27, 2020

APPEARANCES

For Plaintiff:

Mr. Timothy J. Willis
Assistant United States Attorney
Rush Hudson Limbaugh, Sr. Courthouse
555 Independence, 3rd Floor
Cape Girardeau MO 63703

For Defendant:

Ms. Jennifer L. Booth
Assistant Federal Public Defender
325 Broadway, 2nd Floor
P.O. Box 2043
Cape Girardeau MO 63702-2043

Reported by:

Alison M. Garagnani, CCR #475, CSR, RMR, CRR
Official Court Reporter
United States District Court
555 Independence, Room 3100
Cape Girardeau, MO 63703
(573) 331-8832

1 (THE PROCEEDINGS BEGAN AT 10:39 A.M.)

2 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT AND WITH
3 THE DEFENDANT PRESENT:)

4 THE COURT: The next case is the United States of
5 America versus Robbie Donyel Hudson. The Case Number is
6 19-CR-087.

7 The Government is present by Assistant United
8 States Attorney Tim Willis.

9 Defendant is present in person and by counsel
10 Jennifer Booth.

11 This matter is set today for sentencing, you having
12 pled guilty before me several weeks ago.

13 I received a presentence report from the probation
14 office. Did you also get a copy of the report?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Have you read it and have you gone over
17 it in detail with your lawyer?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Any additions, corrections or
20 objections by the Defendant other than those that you made
21 formally?

22 MS. BOOTH: No, sir.

23 THE COURT: For the Government?

24 MR. WILLIS: No, Your Honor.

25 THE COURT: The Court then will adopt as its

1 findings of fact the factual statements set out in the
2 presentence report with the exception of the formal
3 objections that were made by Defendant, which I will take up
4 at this time.

5 And it's my understanding, then, that the
6 Government is going to concede the objection to the six-level
7 enhancement as opposed to the Defendant's position that it
8 should be a two-level enhancement for creating a substantial
9 risk of -- I'm sorry, the difference between that being the
10 Defendant acted recklessly instead of intentionally in his
11 flight from the arresting officers. Did I get that right
12 counsel then?

13 MR. WILLIS: Judge, that is correct. And if I can
14 make a slight record, please. The victim, who's Jesse
15 Johnson, is here. Both counsel and I had an opportunity to
16 talk to him about this this morning. His position is that
17 he knows that Mr. Hudson swerved toward him and came close to
18 striking him, but he's unable to indicate whether that was an
19 intentional act on Mr. Hudson's part or not.

20 It was somewhat dark. Obviously, this is all
21 going on in a quick hurry. He was able to see Mr. Hudson
22 looking forward but was not able to see his eyes or if he was
23 looking at him. During their later discussions, this issue
24 simply didn't come up, so there's simply not enough evidence
25 at this point to show that it was an intentional act on Mr.

1 Hudson's part.

2 THE COURT: In that case I will sustain the
3 Defendant's objection to the six-level enhancement, and it
4 will be then simply a two-level enhancement.

5 And let's address the other objection too. That
6 was the objection about the conviction in 2017, a misdemeanor
7 violation of an order of protection in Arapahoe County,
8 Colorado for which the Defendant received some 400 plus days
9 in jail, well more than a year's worth of days.

10 So did you have evidence that you wanted to submit
11 on that point?

12 MR. WILLIS: Your Honor, I believe that the
13 probation department has those records.

14 THE COURT: Do you want to admit those into
15 evidence then?

16 MR. WILLIS: Yes, Your Honor. If it please the
17 Court.

18 THE COURT: All right. These are summarized by
19 the probation office. And, counsel, you reviewed these?

20 MS. BOOTH: Sir, I have reviewed those records.
21 They do appear to indicate that Mr. Hudson was convicted and
22 the dates of the offense and for the sentence and judgment as
23 indicated in Paragraph 51. However, those are not certified
24 court records. I'll let the U.S. probation officer advise
25 the Court where they came from.

1 It's Mr. Hudson's position that he just simply does
2 not remember being convicted for that offense in 2017 and
3 remaining in jail for 470 days. It could be his memory is
4 faulty. It could be the -- we don't have certified court
5 records, so those records you're holding, sir, may be
6 incorrect. I don't know.

7 But certainly we'll accept the Court's decision
8 once the Court has had an opportunity to review the records.

9 THE COURT: Well, they appear to be records that
10 are part of the public record in the State of California.
11 It's a state court website?

12 Do you have any reason to dispute the accuracy or
13 the validity of these records?

14 MS. BOOTH: Sir, other than the offense for the
15 records you're holding happened in 2012, but it indicates the
16 conviction didn't come down until 2017. That seems a little
17 odd, that delay. But we have nothing to submit to the Court
18 to challenge the accuracy of the exhibit you're holding now.

19 THE COURT: Okay. You've had these documents;
20 right?

21 MS. BOOTH: I have looked at them before today and
22 also today, Your Honor.

23 THE COURT: Okay. I just wanted to make sure that
24 they were -- you were afforded the opportunity to examine all
25 these documents.

1 MS. BOOTH: Yes, sir.

2 THE COURT: I'm going to admit these into evidence
3 and overrule your objection to that particular conviction in
4 Arapahoe County, Colorado.

5 So with that we'll need to recalculate the
6 Sentencing Guidelines, because the Total Offense Level was --
7 well, let me go back then. And having overruled your
8 objections to the second -- your objection to the second
9 point about the Colorado conviction of 2017, I'll adopt as my
10 findings of fact to include that conviction.

11 So at this point let's recalculate the Sentencing
12 Guidelines. The Total Offense Level had been 29, and so now
13 that will be reduced by 4 -- 6 minus 2. So that would be a
14 Total Offense Level of 25 and still the Criminal History
15 Category would be V.

16 So, counsel, do you want to advise the Court then?

17 MR. WILLIS: Judge, I believe that the correct
18 guidelines range with the Total Offense Level of 25 and
19 Criminal History Category of V would be 100 to 125 months.

20 THE COURT: That's what I thought too.

21 You agree with that, don't you?

22 MS. BOOTH: Yes, sir.

23 THE COURT: The probation office also agrees?

24 PROBATION OFFICER: Yes, Your Honor.

25 THE COURT: Okay. The supervised release period

1 then will be 4 to 5 years. I should say the statute
2 provides for a minimum of 5 years to 40 years in prison.
3 The guidelines, then, are 100 months to 125 months and a
4 supervised release period of 4 to 5 years. And the
5 Defendant is ineligible for probation.

6 Any objections then?

7 MR. WILLIS: No, Your Honor.

8 MS. BOOTH: No, sir.

9 THE COURT: The Court then will adopt as its
10 additional findings the Sentencing Guidelines calculations as
11 stated.

12 What then is the Government's recommendation?

13 MR. WILLIS: Your Honor, this is a serious case for
14 a couple of reasons. First of all, it did involve 240 grams
15 of methamphetamine, which is a large amount.

16 Also, it involved Mr. Hudson fleeing and
17 endangering the police officer that was trying to conduct the
18 stop in that instance.

19 Mr. Hudson unfortunately has a very lengthy
20 criminal history dating back to age 11. He's had about 20
21 different convictions. Most of those are driving
22 convictions. Some of them are called driving under
23 restraint, whatever that is in Colorado, and driving while
24 revoked and without a valid driver's license.

25 He has apparently three felony convictions for

1 possession of a controlled substance, including convictions
2 in 1999, 2006 and 2017. He has two misdemeanor marijuana
3 convictions, one in 2000 and one in 1999.

4 According to the presentence report he started
5 smoking marijuana at age 9. That's really an awful record
6 in this instance. Mr. Hudson has been sent to prison the two
7 times. The two drug cases he went to prison for both times
8 he was paroled and later revoked.

9 He's been to treatment a couple of times, once in
10 the Department of Corrections in Colorado and one while on
11 release.

12 So it looks like the authorities have done
13 everything to provide Mr. Hudson the tools that he needs to
14 help himself. He for whatever reason has been unable nor
15 willing to avail himself of that.

16 Under all the circumstances we would suggest that a
17 sentence, which is at the top range of the guidelines, of 120
18 months is an appropriate sentence.

19 There's no restitution owing. I spoke with the
20 victim, who's here today. He suffered no injury or any loss
21 of property.

22 I think that Mr. Hudson would also benefit from
23 RDAP while he's incarcerated, and we would ask that he be
24 considered for placement in the drug treatment program.

25 THE COURT: Ms. Booth, I've read closely your

1 sentencing memorandum, and I'll consider all of that
2 information, all the mitigating factors that you've set out
3 in there. The Section 3553(a) factors are all very well
4 documented, and I want to commend you for a very thorough
5 memorandum.

6 So with that do you want to speak further for your
7 client?

8 MS. BOOTH: No, sir. We understand -- Mr. Hudson
9 and I -- that the Court has carefully read the sentencing
10 memorandum I prepared for today.

11 Just a moment, Your Honor, please.

12 THE COURT: Yeah.

13 (A discussion was held off the record.)

14 MS. BOOTH: Your Honor, Mr. Hudson actually has a
15 letter he's prepared that he was not able to give to me prior
16 today, and he's happy to have Mr. Willis read it and also the
17 Court, but he'd like to just submit it to you versus reading
18 it out loud.

19 THE COURT: That's fine. If you want to just bring
20 it up.

21 we'll go off the record.

22 Do you have a copy for Mr. Willis?

23 MS. BOOTH: I do not. I can make a copy quickly.

24 MR. WILLIS: It's not very long. I'm willing to
25 read it briefly, and then we can proceed if you want.

1 THE COURT: It won't take long.

2 MR. WILLIS: Okay.

3 (A discussion was held off the record.)

4 THE COURT: Mr. Willis, have you finished reading
5 the letter?

6 MR. WILLIS: Yes, Your Honor.

7 THE COURT: This does cause me some concern. This
8 is all new information. I don't know if you've seen it?

9 MS. BOOTH: Sir, yes.

10 (PURSUANT TO LOCAL RULE 13.05, A CONFERENCE WAS
11 HELD ON THE RECORD AND PLACED UNDER SEAL, AFTER WHICH THE
12 FOLLOWING PROCEEDINGS CONTINUED IN OPEN COURT:)

13 THE COURT: So do you want to say anything else
14 then?

15 THE DEFENDANT: No. That will be it, sir.

16 THE COURT: So is there any legal cause or reason
17 why sentence should not now be imposed?

18 MS. BOOTH: No, sir.

19 MR. WILLIS: No, Your Honor.

20 THE COURT: Looking at your record, Mr. Hudson, and
21 all that's catching up with you. You know, you've been to
22 prison. You've had substance abuse treatment and nothing
23 seems to work, and I'm just really concerned about it.

24 THE DEFENDANT: For the last six years I've been
25 just -- I've been going on the right path. For the last six

1 years I've been in no trouble but one time where I had
2 marijuana, and that's been six years. So I've been clean
3 and good and was doing well.

4 THE COURT: I'm just looking back over it. Over
5 the last -- since 2006 you've got four years in prison in
6 2006. Actually, that was you didn't get sentenced until
7 2008. Four years in prison there. And then in 2007 you got
8 a misdemeanor conviction for assault, harassment.

9 And then 2012 you got another misdemeanor
10 conviction, and that was for the 470-day jail thing, but that
11 went back to 2012, of course. And then in 2016 you got
12 another felony conviction, though, for marijuana, although
13 the total punishment was a fine. I guess that's right.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Okay. Pursuant to the Sentencing
16 Reform Act of 1984 and the provisions of Title 18, United
17 States Code Section 3553(a) and all the factors thereunder
18 and also in view of the sentencing objectives of just
19 punishment, general deterrence and incapacitation it's the
20 judgment and sentence of the Court that you, Robbie Donyel
21 Hudson, is hereby committed to the custody of the Bureau of
22 Prisons to be imprisoned for a term of 100 months.

23 while you're in the custody of the Bureau of
24 Prisons, I recommend that you be evaluated for participation
25 in the Residential Drug Abuse Program and for mental health

1 treatment.

2 I also recommend that you be evaluated for
3 participation in occupational/educational programs in welding
4 and HVAC.

5 when you're released, you'll be placed on
6 supervised release for a term of four years.

7 within 72 hours of your release you have to report
8 in person to the probation office in the district to which
9 you're released.

10 You'll have to comply with the mandatory conditions
11 that have been adopted by this Court, which include you must
12 not commit another federal, state or local crime.

13 You must not unlawfully possess a controlled
14 substance. You must refrain from any unlawful use of a
15 controlled substance and submit to drug testing at the
16 direction of the probation office.

17 And you must cooperate in the collection of DNA as
18 directed by the probation office.

19 You're also subject to the following additional
20 special conditions, and if it is determined that there are
21 any costs associated with the services provided, you have to
22 pay those costs based on a co-payment fee established by the
23 probation office.

24 I thought that you had received a high school GED.

25 THE DEFENDANT: I did.

1 THE COURT: Okay. Although I don't think it's
2 been confirmed. Do you have a certificate on that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Okay. So I'm going to order that as a
5 special condition that you participate in a mental health
6 treatment program. I know you've got mental health issues,
7 and I really want to get those under control with the right
8 medication and counseling, and so forth.

9 Again, you must submit to substance abuse testing,
10 but you also must participate in a substance abuse treatment
11 program as directed by the probation office.

12 You also must submit your person, property, house,
13 residence, vehicle, papers, computers, other electronic
14 communications or data storage devices or media or office to
15 a search conducted by the probation office if there's
16 reasonable suspicion that you've violated a condition of your
17 supervised release and that the areas to be searched contain
18 evidence of the violation.

19 The Court finds you do not have the ability to pay
20 a fine, but it is further ordered that you shall pay to the
21 United States a special assessment of \$100, and that's due
22 immediately.

23 I have to advise you you have a right to appeal
24 from this sentence, but you have to bring your appeal within
25 14 days. Failure to appeal within the 14-day period will be

1 a waiver of your right to appeal.

2 You're also entitled to assistance of counsel in
3 taking an appeal. If you can't afford a lawyer, one will be
4 appointed to represent you. And if you so request, the
5 clerk of the court will file a notice of appeal on your
6 behalf.

7 Do you understand you have that right to appeal?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Is there anything further, then, for
10 the Government?

11 MR. WILLIS: No, Your Honor. Thank you.

12 THE COURT: For the Defendant?

13 MS. BOOTH: Your Honor, just a brief moment.

14 Your Honor, Mr. Hudson would like to ask the Court
15 to recommend that he be placed as close to Colorado as
16 possible.

17 THE COURT: I'll make that recommendation.

18 Before you leave, Mr. Hudson, I hope you take
19 advantage of the programs in the prison system to better
20 yourself. To the extent you've got a drug problem the RDAP
21 program in the prison system is the best in the world, but
22 you really need to get some more education. You need to get
23 some more vocational training. You need to get your mental
24 health problems under control.

25 And while you're doing this time and later when you

1 get out, there will be all sorts of programs to help you help
2 yourself on all those points.

3 so good luck to you then.

4 Court will be in recess until the afternoon docket
5 then.

6 (PROCEEDINGS CONCLUDED AT 12:10 P.M.)

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C E R T I F I C A T E

I, Alison M. Garagnani, Registered Merit Reporter and Certified Realtime Reporter, hereby certify that I am a duly appointed Official Court Reporter of the United States District Court for the Eastern District of Missouri.

I further certify that the foregoing is a true and accurate transcript of the proceedings held in the above-entitled case and that said transcript is a true and correct transcription of my stenographic notes.

I further certify that this transcript contains pages 1 through 16 inclusive and that this reporter takes no responsibility for missing or damaged pages of this transcript when same transcript is copied by any party other than this reporter.

Dated Cape Girardeau, Missouri, this 13th day of July, 2020.

/s/Alison M. Garagnani
Alison M. Garagnani, CCR, CSR, RMR.
Official Court Reporter